force the unfavorable shipper out of business, or whether the same end is accomplished by discrimination as to siding facilities.

This was the view taken by the Interstate Commerce Commission in a recent case decided under the Interstate Commerce Act, in which it appeared that the shippers were in substantially similar circumstances, and the result of the discrimination in furnishing the sidings was to create a monopoly as against the complainant. *Red Rock Fuel Co.* v. *Baltimore & Ohio Railroad Co.* (1905) 11 Interst. Com. Rep. 438. Upon the facts as stated in the principal case, the decision seems correct in legal theory and in accord with the purpose of the Interstate Commerce Act to prevent the fostering of monopolies by the railroads. Interst. Com. Act, 24 U. S. Stat. 379. As a practical proposition, however, the doctrine set forth in the principal case is not one which will admit of very wide application. The increased difficulties in the operation of the road for the best interests of the public, which may result from the granting of side-tracks, and the various differences in circumstances which must exist between shippers, together with the fact that the railroads do not hold themselves out generally to provide such facilities, would seem to justify the refusal of them, unless, as in the principal case, no increased difficulty in the operation of the road which affects its service in general is shown, and unless the shippers are in substantially similar circumstances, so that the discrimination results in a monopoly.

CONTROL OF GOVERNOR BY MANDAMUS.—Although it is inevitable under the division of powers upon which our governmental systems are based, that the spheres of the departments should encroach to some extent upon each other, the efficiency of government demands that these depositaries of sovereign power should work without friction and avoid conflicts, and that each should be independent and co-ordinate. *Kilbourn* v. *Thompson* (1880) 103 U. S. 168; *Low* v. *Towns* (1850) 8 Ga. 360, 372. Accordingly, it is with hesitation that any power involving the element of control by one department over either of the others is established. *In re Legislative Adjournment* (1893) 18 R. I. 824. The courts, for instance, have been unwilling to declare in favor of a right to enjoin either the legislative or the executive, *State* v. *Johnson* (1866) 4 Wall. 475, 500, or to subject them to judicial process. *Appeal of Hartranft* (1877) 85 Pa. St. 433. It is apparent that the writ of mandamus, which has been defined as "a command issuing from a common law court of competent jurisdiction in the name of the state or sovereign, directed to some * * * officer * * * requiring the performance of some particular duty therein specified", High, Ex. Legal Rem. § 1, is equally inconsistent with a system of co-ordinate departments and objectionable as tending to create friction between them. For these reasons a great majority of the courts have refused to issue a mandamus to the governor of a state. *People ex rel. Sutherland* v. *Governor* (1874) 29 Mich. 320; *Hovey* v. *State* (1890) 127 Ind. 588; *State* v. *Fletcher* (1867) 39 Mo. 388; *Vicksburg Railroad Co.* v. *Lowry* (1883) 61 Miss. 102.

The contrary result was reached in a recent Kentucky case in which a mandamus was issued to compel the governor to sign treasury warrants. *Cochran* v. *Beckham* (1905) 89 S. W. 262. The first judicial expression of this view, *State* v. *Chase* (1856) 5 Ohio St. 528, was based upon the unwarranted extension of a dictum of Chief Justice Marshall, that "it is not by the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus is to be determined." *Marbury* v. *Madison* (1803) 1 Cranch 137, 170. Later cases have added to this the ground that a refusal to issue mandamus would place the governor "above the law", *Magruder* v. *Swann* (1866) 25 Md. 173, and deny a remedy to a violated right. *Cotten* v. *Ellis* (N. C. 1860) 7 Jones 545, a position that must depend upon the narrow theory that all law is judicial process and all remedies are to be found in courts of law. Upon such reasoning has been developed the doctrine, later repudiated in certain jurisdictions, *Hovey* v. *State*, supra; *State* v. *Jelks* (1902) 138 Ala. 115, 121, that the writ should issue against a governor to compel the performance of a purely ministerial duty, i. e. one involving no discretion. *Tennessee &c. R. R. Co.* v. *Moore* (1860) 36 Ala. 371; *Gray* v. *Coghlen* (1880) 72 Ind. 567; *Martin* v. *Ingraham* (1888) 38 Kan. 641. Since the remedy will never be used to interfere with discretionary powers, *U. S.* v. *Seaman* (1854) 17 How. 225; *Cassidy* v. *Young* (1891) 92 Ky. 227, such a doctrine makes out no stronger case against the governor than against any minor official, and fails altogether if, as suggested in *State* v. *The Governor* (N. J. 1856) 1 Dutch. 331, 351, "ministerial" properly means something done under superior authority, or if, as laid down in *People ex rel. Sutherland* v. *Governor*, supra, every duty put into the hands of the governor is presumed to involve discretion. *Hawkins* v. *Governor* (1839) 1 Ark. 570, 586. In any case, under the rule that mandamus will not issue where it would be ineffectual, High, Ex. Legal Rem. § 14; *County Comm'rs* v. *City of Jacksonville* (1895) 36 Fla. 196, it is difficult to justify its use against the chief executive, who is not subject to judicial process, *State of Mississippi* v. *Johnson*, supra, and who cannot be forced to obey. *People ex rel. Broderick* v. *Morton* (1898) 156 N. Y. 136, 145. There is little to support a doctrine that, for the ineffectual assertion of a narrow principle, obscures the theory of co-ordination in the division of governmental powers. *Mauran* v. *Smith* (1865) 8 R. I. 192.

RIGHTS OF PARENTS TO CUSTODY OF CHILDREN.—A determination of the nature and extent of the rights of parents to the custody of their children has become of vital importance with the widespread establishment of juvenile courts possessing broad discretionary powers to commit large classes of children to State institutions upon the ground that the welfare of the child demands an assumption by the State of parental control, *Commonwealth* v. *Fisher* (Pa. 1905) 62 At. 198; *Ex parte Loving* (1903) 178 Mo. 194; *In re Benson* (Utah 1906) 62 Cent. L. J. 219; see *Hunt* v. *Judges* (Mich. 1905)